

## **MEETING MINUTES, BOARD OF ZONING APPEALS, AUGUST 27, 2007**

**Present:** Phil Tinkle, Mike Campbell, Shan Rutherford, Ken Knartzer, Shawna Koons-Davis, City Attorney, William Peeples, Senior Planner; and Janice Nix, Recording Secretary

The meeting was called to order at 6:00 p.m. by Phil Tinkle, Chairman.

### **PREVIOUS MINUTES**

August 13<sup>th</sup> – Rutherford moved to approve the minutes as mailed, seconded by Campbell. Vote for **approval** was unanimous, 4-0. **Motion carried.**

### **FINDINGS OF FACT**

#### **Docket V2007-013 – Dimensional Variance** – Aldi

Knartzer moved that in consideration of the statutory criteria that the Board adopt the written Findings of Fact, incorporating the evidence submitted into the record, as our final decision and final action for Variance Petition Number V2007-013, seconded by Campbell. Vote for **approval** was unanimous, 4-0. **Motion carried.**

#### **Docket V2007-014 – Dimensional Variance** – Greenwood Christian Academy

Rutherford moved that in consideration of the statutory criteria that the Board adopt the written Findings of Fact, incorporating the evidence submitted into the record, as our final decision and final action for Variance Petition Number V2007-014, seconded by Campbell. Vote for **approval** was unanimous, 4-0. **Motion carried.**

#### **Docket V2007-015 – Dimensional Variance** – Dr. Greg Hardin

Campbell moved that in consideration of the statutory criteria that the Board adopt the written Findings of Fact, incorporating the evidence submitted into the record, as our final decision and final action for Variance Petition Number V2007-015, seconded by Knartzer. Vote for **approval** was unanimous, 4-0. **Motion carried.**

### **NEW BUSINESS**

**Docket V2007-016 – Use Variance** – Challenger Newspapers – located at 400 E. Main St. – request to allow newspaper business office in R-2 Residential zone – Doug & Kelly Chambers, owners, representing.

Doug Chambers came forward and was sworn. He asked that this petition be continued so that legal representation can be obtained. Rutherford moved to continue V2007-016 to October 8, 2007, seconded by Knartzer. Vote for **approval** for the **continuance** was unanimous, 4-0. **Motion carried.**

**Docket V2007-017 – Dimensional Variance** – Worthsville Road LLC – located on the southside of Worthsville Rd., west of CR 75E and east of the railroad – request is to: 1) decrease rear yard setback on Lot 1 from 100' to 30', 2) decrease the rear yard setback on Lots 2, 3, 7, 8 & 9 from 100' to 55', and 3) decrease interior lot side yard for Lots 1-11 from 50' to 20' – Worthsville Road, LLC, petitioner and owner; Van Valer Law Firm, representing.

Joe Van Valer and Brandi Foster, attorneys, came forward and were sworn, as well as members of the audience.

Attorney Van Valer reviewed the three variances being requested. Photographs of the property and surrounding area were distributed for the Board's review.

The petitioner addressed the statutory criteria as follows:

Variance Request #1 – Decrease rear yard setback on Lot 1 from 100' to 30'

1. **Criteria:** The approval will not be injurious to the public health, safety, morals, and general welfare of the community. **Answer:** The proposed development incorporates adequate buffering based on the intent of the Ordinance by using the rear wall of the self-storage warehouse as the required fence.
2. **Criteria:** The use and value of the area adjacent to the property included in the Variance will not be affected in a substantially adverse manner. **Answer:** The request simply seeks to reduce setbacks within that development zoned for, and should be improved with, industrial land uses. Given that the nature of adjacent land uses are either industrial or undeveloped, the impact on those uses should be minimal and in no way dissimilar to uses that meet the required setbacks.
3. **Criteria:** The strict application of the terms of the Zoning Ordinance will result in practical difficulties in the use of the property. **Answer:** Self storage warehouses predominately serve residential land uses and, if appropriately developed, are consistent with that style of development. The location of this warehouse use, consistent with commercial development standards, would provide for the maximization of property without adverse impact associated with a typical industrial land use. Strictly applying the industrial development standards on a self-storage warehouse use would lead to an underutilization of the property.
4. **Criteria:** The proposed structure is/is not regulated under Indiana Code 8-21-10 because **Answer:** The site is located 13,450 feet from the nearest public use airport and is not within the Airspace Overlay District.

Variance Request #2 – Decrease the rear yard setback on Lots 2, 3, 7, 8 & 9 from 100' to 55'

1. **Criteria:** The approval will not be injurious to the public health, safety, morals, and general welfare of the community. **Answer:** The petitioner has proposed the use of alternative buffering as a separation from the adjacent proposed residential use. The petitioner shall install a combination of 6-foot mounding and fencing in addition to landscaping as an adequate transition between these uses and the proposed residential to the east.
2. **Criteria:** The use and value of the area adjacent to the property included in the Variance will not be affected in a substantially adverse manner. **Answer:** The request simply seeks to reduce setbacks within that development zoned for, and should be improved with, industrial land uses. Given that the nature of adjacent land uses are either industrial or undeveloped, the impact on those uses should be minimal and in no way dissimilar to uses that meet the required setbacks.
3. **Criteria:** The strict application of the terms of the Zoning Ordinance will result in practical difficulties in the use of the property. **Answer:** typically it is difficult to demonstrate a practical difficulty on undeveloped land; however, in this instance, the narrowness of the property and the need to install a public street to adequately serve the development creates lots which have less depth than a normal industrial lot. Additionally, the requirement to plat setback lines means that it is prudent to reduce the setbacks prior to platting if there is a necessity to do.
4. **Criteria:** The proposed structure is/is not regulated under Indiana Code 8-21-10 because **Answer:** The site is located 13,450 feet from the nearest public use airport and is not within the Airspace Overlay District.

Variance Request #3 – Decrease interior lot side yard for Lots 1-11 from 50' to 20'

1. **Criteria:** The approval will not be injurious to the public health, safety, morals, and general welfare of the community. **Answer:** The proposed side yard setback requests would affect only the lots interior to the industrial development and any future buildings will maintain a minimum 40 foot building separation, there should be no impact on the general public.
2. **Criteria:** The use and value of the area adjacent to the property included in the Variance will not be affected in a substantially adverse manner. **Answer:** The request simply seeks to reduce setbacks within that development zoned for, and should be improved with, industrial land uses. Given that the nature of adjacent land uses are either industrial or undeveloped, the impact on those uses should be minimal and in no way dissimilar to uses that meet the required setbacks.
3. **Criteria:** The strict application of the terms of the Zoning Ordinance will result in practical difficulties in the use of the property. **Answer:** The requirement to plat setback lines means that it is prudent to reduce the setbacks prior to platting if there is a necessity to do so.
4. **Criteria:** The proposed structure is/is not regulated under Indiana Code 8-21-10 because **Answer:** The site is located 13,450 feet from the nearest public use airport and is not within the Airspace Overlay District.

On Lot #1 self storage buildings will be built. The uses of the other lots have not been determined at this time.

The floor was opened for remonstrance. Robin Close, adjacent property owner, came forward. She is opposed to the variance being approved. She is proposing to build another home on her property in the future.

Van Valer came forward for rebuttal. Mrs. Close's home is zoned I-2 but is grandfathered for residential use. Single-family residential is not allowed in industrial zoning so building another house on the Close's lot may be a problem.

Mrs. Close came forward again. She stated she is speaking for current and future homeowners and hopes that the variance will not be approved. Brenda Roy, 2548 Longleaf Dr, Grwd came forward. She is not opposed to industrial, just to the buildings being closer than 100'. Her future home on Mrs. Close's property will abut the proposed storage buildings. Van Valer stated there will be a buffer between the buildings and Mrs. Close's property.

Alan Small came forward. He addressed what the hardship will be if the setback variance requests are not granted. If the setback variance for lot #1 is not granted, the buildings will have to be turned with the doorways facing the Close's property. A driveway might also be installed in that area. They feel what they are proposing will be less intrusive. Knartzer inquired about how many units would be eliminated if the variance is not granted. Small addressed that question.

Rutherford moved that we admit into the record all evidence presented in regard to this matter, including the notices, receipts, maps, photographs, written documents, Petitioner's application and attachments, Petitioner's Detailed Statement of Reasons, the Staff Report prepared by the Planning Department, certified copies of the Zoning Ordinance and Comprehensive Plan, testimony of the Petitioner, City planning staff and any Remonstrators, and all other exhibits presented, be they oral or written, for consideration by this Board in regard to this petition, seconded by Knartzer. Vote for **approval** was unanimous, 4-0. **Motion carried.**

Variance Request #1 – Decrease the rear yard setback on Lot 1 from 100' to 20'

Knartzter moved that based on the evidence presented that the Board approving the granting of a dimensional variance to decrease the rear yard setback on Lot 1 from 100' to 30' for Worthsville Rd. LLC, seconded by Campbell. Vote for **approval** was unanimous, 4-0. **Motion carried.**

Variance Request #2 – Decrease the rear yard setback on Lots 2, 3, 7, 8 & 9 from 100' to 55'

Knartzter moved that based on the evidence presented that the Board approving the granting of a dimensional variance to decrease the rear yard setback on Lots 2, 3, 7, 8 & 9 from 100' to 55' for Worthsville Rd. LLC, seconded by Rutherford. Vote for **approval** was unanimous, 4-0. **Motion carried.**

Variance Request #3 – Decrease interior lot side yard for Lots 1-11 from 50' to 20'

Rutherford moved that based on the evidence presented that the Board approving the granting of a dimensional variance to decrease interior lot side yard for Lots 1-11 from 50' to 20' for Worthsville Rd. LLC, seconded by Campbell. Vote for **approval** was unanimous, 4-0. **Motion carried.**

Campbell moved that having considered the statutory criteria that we direct the City Attorney's Office to draft written Findings of Fact, regarding our decisions on all the variance requests presented in Variance Petition Number V2007-017, said Findings to specifically incorporate the staff report and the evidence submitted into the record, for consideration and adoption by the Board of Zoning Appeals as our final decision and final action regarding this Petition at our next meeting, seconded by Knartzter. Vote for **approval** was unanimous, 4-0. **Motion carried.**

#### **ANNOUNCEMENTS/REPORTS**

Knartzter moved to adjourn, seconded by Campbell. Vote for **approval** was unanimous, 4-0. **Motion carried.** Meeting was adjourned at 7:00 p.m.

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JANICE NIX  
Recording Secretary

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PHIL TINKLE  
Chairman